JOHN PRIOR
ATTORNEY AT LAW
ISB 5344
429 SW 5th Avenue #110
Meridian, Idaho 83642
Telephone: (208) 465-9839
Email john@jpriorlaw.com
Attorney for Defendant Chad Guy Daybell

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

STATE OF IDAHO, Plaintiff, v. CHAD DAYBELL, Defendant.	Case No.: CR22-21-1623 MOTION TO STRIKE THE DEATH PENALTY BASED ON RELATIVE CULPABILITY

COMES NOW the Defendant, Chad Daybell, and through undersigned counsel, submits this Motion to Strike the Death Penalty based on Relative Culpability.

During the trial of Mr. Daybell's co-defendant, Lori Vallow, the State consistently argued that Ms. Vallow was the most culpable party to the alleged conspiracy that led to the deaths of Tylee Ryan, J.J. Vallow, and Tamara Daybell. As the State repeatedly argued, Ms. Vallow set the conspiracy in motion, she manipulated both Alex Cox and Chad Daybell, and she remained in charge of her plan throughout. As the State plainly put it, Lori "manipulated Chad through emotional and sexual control," TR 3859: 21-23, and "Chad [was] not going to act without Lori saying so," TR 3868: 12-13.[1]

[1] Citations to the trial transcript for the trial of Lori Vallow will be in the following format. TR: [Page Number]: [Line Numbers].

As such, per the State's own presentation of evidence and arguments in the trial of Lori Vallow, Mr. Daybell has lesser culpability than his co-defendant, who did not face the death penalty. Even when two co-defendants are equally culpable, it is unconstitutional and unacceptable to subject one of them to the most extreme punishment available, while the other did not face that possibility. Therefore, Mr. Daybell should not face more extreme punishment than the co-defendant that the State itself has alleged to be more culpable. Pursuant to the Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Idaho Const. Article I, Sections 6, 7, 8 and 13, as well as the legal authorities cited below, Mr. Daybell respectfully requests that the Court strike the death penalty as a sentencing option so that Mr. Daybell faces a maximum punishment in line with the co-defendant alleged to be more culpable.

FACTUAL AND PROCEDURAL BACKGROUND

The State of Idaho charged Chad Daybell and Lori Vallow as co-defendants in connection with the deaths of Tylee Ryan, J.J. Vallow, and Tamara Douglas Daybell. On March 3, 2023, the Court severed Mr. Daybell's and Ms. Vallow's trials. Ms. Vallow's trial began in April 2023. She was convicted on all counts and ultimately sentenced to life in prison. During her trial, the State argued that Ms. Vallow was the most culpable party to the alleged conspiracy in the following ways:

1. **Lori Vallow Was the Common Thread between the Murders and Set the Alleged Conspiracy in Motion.**

    a. "[T]his plan was driven by Lori's desire for and use of money, power, and sex. And this plan, which she set in motion . . ." TR 3830: 13-15.

    b. "And there is one common thread through these murders, Lori Vallow. She is the one person who ties these all together." TR 3834-35.

    c. "She's moving this plan forward. There is no question that Tylee Ryan, JJ Vallow, and Tammy Daybell were murdered. Who is the common thread? Lori Vallow." TR 3871: 2-5.

d. "The evidence in this case points to one common thread, and that thread is Lori Vallow." TR 3903: 20-22.

e. "She is a killer. Lori is the connection to the deaths." TR 3903: 23-24.

2. Lori Vallow Manipulated Alex Cox and Chad Daybell to Follow Her.

a. "Lori manipulated Alex through religion. She manipulated Chad through emotional and sexual control." TR 3859: 21-23.

b. "[S]he groomed Alex Cox." TR 3859: 25.

c. "Lori uses sex to manipulate Chad. And Chad seeks confirmation from Lori repeatedly." TR 3862: 3-5.

d. "[Chad's] telling [Lori] what she wants to hear. She reinforces him with sexual behavior." TR 3865: 1-2.

3. Lori Vallow Led the Alleged Conspiracy Throughout.

a. "Chad is not going to act with Lori saying so . . ." TR 3868: 12-13.

b. "Lori is the conduit of information to Alex. He does – Alex does what Lori tells him . . ." TR 3847: 2-5.

c. "Lori Vallow handed off JJ to Alex Cox." TR 3855: 9-10.

d. "Lori Vallow is telling Alex Cox what to do. In these messages, you never see Alex tell her what to do. She's telling him what to do." TR 3860 15-17.

e. "[Melanie Gibb] responds: Okay, Captain. Why does she say: Okay, Captain. Because Lori is in charge." TR 3869: 6-9.

f. "What does Chad say? Just grab me by the storm and I will follow you to the ends of the universe. Not will you follow me, Lori. I will follow you." TR 3909: 14-18.

In sum, the consistent core of the State's case has been that Lori set a conspiracy in motion, that she manipulated Chad Daybell and Alex Cox to partake in that conspiracy, and that she was in charge throughout her plan. Based on the State's presentation of evidence and arguments, Ms. Vallow was convicted on all counts. But she did not face the death penalty. Only Mr. Daybell—who the State has asserted was "not going to act without Lori saying so," TR 3868: 12-13—is

facing the death penalty. Despite the State repeatedly asserting that Lori Vallow sexually and emotionally manipulated Chad Daybell in pursuit of her aims, Mr. Daybell faces a more severe punishment than Ms. Vallow. Despite the State's consistent argument that Lori groomed Alex Cox, continued to manipulate him, then handed her son off to be killed by Alex, only Chad Daybell faces the death penalty. Despite the State's presentation of evidence that Chad "will follow" Lori, not the other way around, TR 3909: 14-18, only the person alleged to be the manipulated follower is facing the possibility of a death penalty.

ARGUMENT

The U.S. and Idaho Constitutions both prohibit cruel and unusual punishments. U.S. Const. amend. VIII; ID Const. art. I, § 6. Under each, punishment is cruel and unusual if it is excessive in relation to either the circumstances and nature of the crime itself or the personal characteristics of the offender. *See, e.g.*, *Graham v. Florida*, 560 U.S. 48, 59-61 (2010) ("The concept of proportionality is central to the Eighth Amendment."); *Roper v. Simmons*, 543 U.S. 551, 560 (2005) (recognizing that the Eighth Amendment's respect for the "dignity of all persons" includes a requirement that punishment be proportionate to the offense and offender). Put differently, a sentence is constitutional only when it is proportionate both to the facts of the crime and to the offender's relative culpability.

Given the uniquely harsh nature of the sentence, "[c]apital punishment must be limited to those offenders . . . whose extreme culpability makes them 'the most deserving of execution.'" *Roper*, 543 U.S. at 568 (quoting *Atkins v. Virginia*, 536 U.S. 304, 319 (2002)). A crime may be one that inflicted "hurt and horror . . . on [the] victim" and that caused "revulsion [in] society, and the jury that represents it," but may nevertheless be one for which death is a disproportionate penalty. *Kennedy v. Louisiana*, 554 U.S. 407, 413 (2008). Thus, regardless of the morally shocking

nature of an alleged offense, the death penalty may be a disproportionate sentence based on the offender's relative culpability.

With respect to this proportionality inquiry in co-defendant cases, evaluation of each individual's relative culpability in the same criminal case is a necessary element of a constitutional death-sentencing scheme. *See Enmund v. Florida*, 458 U.S. 782 (1982) (holding that identical treatment of co-defendants without regard for their different levels of culpability was impermissible under the Eighth Amendment). **When two co-defendants have the same level of alleged culpability, it is unconstitutionally cruel and unusual to sentence one to death, while the other does not receive such a sentence**. *See, e.g.*, *People v. Kliner*, 705 N.E.2d 850, 897 (Ill. 1998) (holding that, in capital cases, "similarly situated codefendants should not be given arbitrarily or unreasonably disparate sentences"); *Larzelere v. State*, 676 So.2d 394, 406 (Fla. 1996) (holding that, even in noncapital cases, "[w]hen a codefendant (or coconspirator) is equally as culpable or more culpable than the defendant, disparate treatment of the codefendant may render the defendant's punishment disproportionate").

Numerous state courts have recognized the constitutional necessity of case-specific proportionality between co-defendants in capital cases. In *Smith v. Commonwealth*, 634 S.W.2d 411, 413 (Ky. 1982), the trial court **precluded the death penalty as a possible sentencing option for one co-defendant after a more culpable co-defendant pled and received a term of years**. The Kentucky Supreme Court upheld this ruling. *Id.* In *Slater v. State*, 316 So. 2d 539, 542 (Fla. 1975), two men were charged with murder of a motel manager during a robbery. The co-defendant who pulled the trigger pled to first degree murder and was sentenced to life in prison. The other co-defendant, who fully participated in planning and executing the robbery but did not pull the

trigger, went to trial and was sentenced to death. In recognizing the inherent unfairness of this outcome, the Florida Supreme Court reduced the death sentence to life in prison:

> We pride ourselves in a system of justice that requires equality before the law. Defendants should not be treated differently upon the same or similar facts. When the facts are the same, the law should be the same. The imposition of the death sentence in this case is clearly not equal justice under the law... We recognize the validity of the Florida death penalty statute...but it is our opinion that the imposition of the death penalty under the facts of this case would be an unconstitutional application under *Furman v. Georgia,* 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972).

Slater, 316 So. 2d at 542.

Similarly, in *Hazen v. State,* 700 So.2d 1207, 1214 (Fla. 1975), the court reversed a death sentence imposed against Mr. Hazen, one of three co-defendants involved in a burglary, rape, and murder. The three men entered the house of a couple, shot a man at point-blank range, killing him, and took turns raping his wife. One of the non-triggermen co-defendants received a sentence of life imprisonment in exchange for testifying against the other two. Mr. Hazen, the other non-triggerman, was sentenced to death at trial. In reversing the sentence, the court found it was **disproportionate to sentence Mr. Hazen to death given that he was less culpable than the non-triggerman co-defendant who had cut a deal** and testified against him. The State asserted that it wished to sentence all three co-defendants to death but made a strategic decision to offer one of the non-triggermen a deal in order to strengthen their case against the other two. *Id.* at 1211-12. The Court concluded this was not an adequate justification to depart from the principle that justice requires equality before the law. *Id.* at 1211. The Court then reaffirmed that a life sentence for one defendant precludes a death sentence for a less culpable co-defendant. *Id.* at 1214.

In *Hall v. State*, 241 Ga. 252 (1978) (overturned on other grounds), the defendant was sentenced to death for the armed robbery and felony murder of a liquor store clerk. His co-

defendant, the triggerman, received a life sentence. **In finding that there was no evidence Hall \was the "prime mover" in the crime, Hall's death sentence was vacated**: "under these circumstances, the death sentence, imposed upon Hall for the same crime in which the codefendant triggerman received a life sentence, is disproportionate." *Id.* at 260. Other cases have iterated the same principle. *See, e.g.*, *Curtis v. State*, 685 So.2d 1234 (Fla. 1996) (reducing death sentence to life with possibility of parole after 25 years where co-defendant was the actual killer and was sentenced to life, though the defendant sentenced to death had also shot the victim); *Reddix v. State*, 547 So.2d 792, 794 (Miss. 1989) (finding death sentence disproportionate for less-culpable defendant involved in planning and executing robbery that resulted in death where co-defendant received life sentence); *Bullock v. State*, 525 So.2d 764, 770 (Miss. 1987) (finding death sentence disproportionate for defendant who held victim down while co-defendant delivered fatal blows and co-defendant received life sentence).

In this case, the State has made clear that Ms. Vallow is more culpable than Mr. Daybell, whom she emotionally and sexually manipulated into following her. As the State repeatedly asserted, the conspiracy "was driven by Lori's desire for and use of money, power, and sex," and was indeed "set in motion" by Lori. TR 3830: 13-15. The State has consistently argued that Lori manipulated both Alex Cox and Mr. Daybell into being her followers. *See, e.g.*, TR 3859: 21-23 ("Lori manipulated Alex through religion. She manipulated Chad through emotional and sexual control."); TR 3859: 25 ("[S]he groomed Alex Cox."); TR 3862: 3-5 ("Lori uses sex to manipulate Chad. And Chad seeks confirmation from Lori repeatedly."). And the State has presented evidence and argued that Lori was the leader of the alleged conspiracy, and Chad only followed Lori's direction. *See. e.g.*, TR 3868: 12-13 ("Chad is not going to act with Lori saying so . . ."); TR 3909:

14-18 ("What does Chad say? Just grab me by the storm and I will follow you to the ends of the universe. Not will you follow me, Lori. I will follow you.").

Yet, despite the core of the State's case against Ms. Vallow centering around her heightened culpability, her manipulation of Mr. Daybell, and her directing of the alleged conspiracy, only Mr. Daybell faces the death penalty. While the State's prosecution of Ms. Vallow has established that—even if all of the State's allegations were accepted as true—Mr. Daybell was not more culpable in the alleged conspiracy than Ms. Vallow, he is the co-defendant facing the most extreme punishment available. The State's seeking of Mr. Daybell's death is cruel and unusual.

Additionally, as other cases have pointed out, it is arbitrary and capricious—in violation of Mr. Daybell's due process rights—to continue seeking the death penalty against him when a more culpable co-defendant has been spared that outcome. In an analogous case, *United States v. Littrell*, 478 F.Supp.2d 1179 (C.D. Cal. 2007), multiple members of the Aryan Brotherhood were put on trial for a series of murders committed at the behest of the organization. When two of the leaders of the organization were not sentenced to death, the Government "withdrew its intention to seek the death penalty" against seven less culpable defendants. *See id.* at 1183-84. However, the Government continued to seek the death penalty against Gary Joe Littrell, an individual that was then incarcerated for violent offenses and who strangled another incarcerated individual to death, at the behest of leaders of the Aryan Brotherhood. *Id.* at 1184. In support of the decision to continue seeking his death, the Government presented evidence that Mr. Littrell committed "a brutal crime" and was himself "a dangerous criminal with a history of violence." *Id.* at 1189. The district court noted that the Government had already tried the leaders of the conspiracy and "it is clear that the Government considered [the two defendants not sentenced to death] to be the two most culpable

individuals in the entire organization." *Id.* The district court explained that it was "at a complete loss to understand how the Government can in good faith seek death against a low-level member of the Aryan Brotherhood like Mr. Littrell when it does not seek that ultimate punishment against the more culpable Commission leaders." *Id.* at 1190. The Government countered that Mr. Littrell was the most culpable person regarding the individual murder that he committed, even if not the most culpable as to the entire conspiracy, but that was rejected by the district court since the Government had made the decision to charge this murder as part of a conspiracy. *Id.* at 1191. As the court explained, "[i]t would be flatly inconsistent with the charges brought in the indictment to find that the Government need not consider the relative culpability of Mr. Littrell in comparison to that of other members of the organization charged in the indictment and in comparison, to the conduct committed by the organization as a whole." *Id.* The district court concluded, "In light of these facts, no rational decision-maker could conclude that Gary Joe Littrell's conduct was so reprehensible, and his moral culpability so great, that he should face execution when the leaders of the organization, the men who ordered Mr. Littrell to kill, and several men who have committed identical crimes to Mr. Littrell in furtherance of the Aryan Brotherhood will not face similar punishment." *Id.* at 1192. As such, the district court found that it violated due process as "arbitrary and capricious" to seek the death penalty against Mr. Littrell when other members of the organization did not face that possibility. *Id.* The court thus struck the death penalty as a sentencing option. *Id.*

CONCLUSION

For the foregoing reasons, any death sentence imposed upon Daybell would violate the fundamental constitutional principles requiring equal justice under law, and would be unconstitutionally disproportionate, excessive, fundamentally unfair, and arbitrary and capricious.

See, e.g., *State v. Page*, 709 N.W.2d 739, 774 (S.D. 2006) (engaging in intra-case proportionality review in death penalty case and noting that "the Supreme Court's opinions in *Enmund* and *Tison* require this Court to focus upon the relative culpability of each co-defendant in the commission of the capital offense"); *State v. Cauthern*, 967 S.W.2d 726, 741 (Tenn. 1998) (engaging in intra-case proportionality review and noting that "[a] disparity in sentencing may [only] exist if there is a rational basis for the decision of the jury to impose the death penalty on one perpetrator and not another").

Mr. Daybell respectfully requests that this Court strike the State's August 5, 2021 Notice of Intent to Seek the Death Penalty pursuant to the Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Idaho Const. Article I, Sections 6, 7, 8 and 13.

DATED this 9th day of November 2023

JOHN PRIOR

NOTICE IS HEREBY GIVEN that on 29th day of November 2023 at the hour of 9:00 am., or as soon thereafter as counsel may be heard, John Prior, attorney for Defendant above named will call up for hearing a hearing for Defendant's Motion to Strike Death Penalty before the Honorable Judge Steven W. Boyce District Judge at the Fremont County Courthouse in St Anthony, ID.

DATED this 9th day of November 2023

JOHN PRIOR
Attorney for Defendant

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the FREMONT COUNTY PROSECUTING ATTORNEY'S OFFICE, by efiling and service to prosecutor@co.fremont.id.us on this date.

DATED this 9th day of November 2023.

JOHN PRIOR
Attorney for Defendant